REMARKS

The Office Action mailed January 6, 2009 has been reviewed and reconsideration of the above-identified application in view of the following amendments and remarks, is respectfully requested

Claims 1-18 are pending and stand rejected.

No claims have been amended.

Claims 1, 7, 10, 13 and 16 are independent claims.

Claims 1-18 stand rejected under 35 USC 103(a) as being unpatentable over Salmonsen (USP no. 7, 209, 874) in view of Silen (USPPA 20020116518).

In rejecting the claims, the Office Action refers to Salmonsen for teaching the claim elements of "receiving the downloaded content according with the detected bandwidth" and "playing the downloaded content combined with the pre-stored content." And refers to Silen for teaching the elements of "reading a pre-stored content which include information relevant to a downloaded content" and "sending a request for downloading the downloaded content according to the information relevant to the downloaded content, wherein the request includes the information of the bandwidth."

Applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

Salmonsen discloses an emulator system capable of connecting to an information interface that communicates from a source to a an information sink in a format native to the information sink. Figure 3 of Salmonsen illustrates a type content source 302 supplying information or media content for presentation on a content sink 304 (see col. 7, lines 66-67). Salmonsen further refers to the content source being an audio and/or video device (see col. 8, lines 1-7) and refers to the content sink 304 as a device that processes the content for presentation (see col. 8, lines 8-26). The emulator may further issue a command to the content source to deliver a media element corresponding to an item selected by a user. This selected item may be associated with a host computer or send over a network (see col. 11, line 60-col. 12, line 2). Salmonsen discloses that the emulator can convert data to a displayable format if the content to be transmitted is not

native to the format of the content sink (see col. 10, lines 55-64). Salmonsen further discloses that a server may include software that searches for content, and receiving a request and determines the format of the searched content. The format of the content may then be transcoded to a suitable format for a renderer. (see col. 12, liens 23-32). Salmonsen further discloses that the emulator may support NTSC 29.97 interlaced frames/sec and PAL 25 interlaced frames/sec) (see col. 23, lines 47-55) (i.e., different bandwidths).

Silen discloses a streaming media presentation system that determines a plurality of aspects about the operating environment including bandwidth and selects a media presentation optimized to afford the best user experience based on a plurality of streaming characteristics. The method of determining bandwidth is based on a staged method of increasing the bandwidth to until known criteria are satisfied.

However, contrary to the assertions made in the Office Action, the combination of the cited references fails to render obvious the invention recited in the claims.

More specifically, Silen discloses utilizing information regarding the operating variables available in an operating system to determine whether the operating system may support a rich media experience or a static environment. However, the operating variables of the operating system are not comparable to the "pre-stored content" recited in the claims as the operating system variables are not relevant to the downloaded content, as is recited in the claims. Rather the variables associated with the operating system are independent of the downloaded content.

In addition, Silen fails to disclose the element of "playing the downloaded content combined with the pre-stored content," as Silen discloses the pre-stored content is associated with the operating system variables, which are not relevant to the downloaded content, as previously discussed.

In addition, Silen teaches that the dynamic bandwidth determination is preformed by the server system during the downloading of the presentation to take advantage of the changes in bandwidth. This dynamic operation is described in para. 0022-0023, wherein the server issues packets of ever increasing size to determine the bandwidth.

According, the request for downloaded content (from the user) cannot include information regarding the bandwidth as the bandwidth is determined at the server side, after the request has been made.

In addition, even if the teachings of Silen were combined with that of Salmonsen, the combined device would fail to disclose the element of "receiving the downloaded content according to the detected bandwidth" as Salmonsen discloses that the transmission may be in different formats (NSTC, PAL) and, hence, different bit rate (bandwidth). However, the transmission in these formats fails to consider that the bandwidth of the channel may be varying such that there may be more, or less, available bandwidth than either of these formats requires.

Hence, the combination of the cited references fails to disclose material elements recited in each of the independent claims.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations

In this case, the combination of the cited references fails to disclose at least one material element recited in the independent claims and thus, the combination of the cited reference cannot be said to render obvious the subject matter recited in the independent claims.

With regard to the remaining claims, these claims depend from a corresponding one of the independent claims and, hence, are also allowable by virtue of their dependency upon an allowable base claim.

For the remarks made herein, applicant submits that the reasons for the objections and rejections of the claims have been overcome and withdrawal of same is respectfully requested.

No amendments to the claims have been made to overcome the rejection of the claims based on the prior art cited.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,

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